

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER 97-106

ADOPTION OF INTERIM SITE CLEANUP REQUIREMENTS

**KATO ROAD LLC
FORMER CAP CONCRETE FACILITY
48870 KATO ROAD
FREMONT, ALAMEDA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Board), finds that:

1. Named Discharger and Regulatory Status:

Named Discharger: Kato Road LLC (hereinafter Discharger) is responsible for the investigation and final cleanup of existing pollution at the former CAP Concrete Facility located at 48870 Kato Road, Fremont, (the Property). Although neither LandBank, Inc., the parent company of Kato Road LLC, or Kato Road LLC discharged the pollution present on the Property, Kato Road LLC is named the discharger as a former owner of the property and has agreed to submit a letter within 10 days of this Order confirming that it will be responsible for compliance with this Order. The Board is aware of other owners and operators who may be dischargers and may consider adding them as dischargers at a later time should the situation warrant.

Kato Road LLC, a wholly owned subsidiary of LandBank, Inc., was formed as a Brownfields acquisition company to purchase this environmentally impaired property for cleanup as part of a Brownfields real estate transaction to sell the property to Southwest Kato LLC, a wholly owned subsidiary of Opus Southwest Corporation (Opus) for redevelopment. Opus' representative states that the real estate transaction and redevelopment is dependent upon Southwest Kato LLC and Opus not being liable for any further Board required investigation or remediation or residual pollution on the site.

By related action of the Board in the adoption of Resolution 97-107, and as stated in Attachment 1 of Resolution No. 97-107, "Mutual Release and Covenant Not to Sue " (Mutual Release) the "Released Parties", as defined therein, which include Southwest Kato LLC, Opus and their respective successors), are not considered to be potentially responsible parties and shall bear no liability for the residual pollution underlying the site as prescribed in Attachment 1. Resolution No. 97-107 and its attachments are incorporated by reference herein.

Regulatory Status: Prior to this Board action the Alameda County Water District (ACWD) was the primary oversight lead agency on soil and groundwater quality issues at the Property under a Memorandum of Agreement with the Board. The ACWD has provided and maintained responsibility for oversight successfully through extensive investigations and

remediation which have been completed. The ACWD has also provided recommendations to the discharger and Board on future and final actions at the Property. Only the Board has the final authority to establish groundwater quality standards, site-specific groundwater cleanup goals, grant final approval of site investigations and remedial action activities, and grant a "Mutual Release and Covenant Not to Sue". Based upon the foregoing, it is appropriate at this time that the Board assume full responsibility for final cleanup and regulatory actions. It is expected that the ACWD will participate in the future oversight of the implementation of this Order.

2. **Mutual Release and Covenant Not to Sue (Mutual Release):** In order to facilitate redevelopment of this site, the Released Parties requested the Mutual Release from the liability associated with the residual pollution at this site. After due consideration of the implications of such a release upon site activities, a Mutual Release was drafted stating that the Board will not hold the Released Parties responsible for investigation or cleanup of the known conditions of pollution, provided that they adhere to the terms contained therein.

Brownfield redevelopment of this site is well warranted, is in the public interest, and the potential environmental benefits related to infill of this currently vacant site may not be realized without the Mutual Release. In conjunction with the requirements of this Order, and in consideration of the minimal remaining risk associated with the known residual pollution, it does not appear that the Mutual Release will adversely affect the Board's ability to regulate this site with the adoption of this Order and accompanying Resolution.

3. **Site Description, Former Facility Operations and Hydrogeology:**

Site Description: The site is approximately 22 acres. The site location is shown in Figure 1 (Attached). Adjacent land use includes Kato Road to the south, a Union Pacific Railroad and Western Pacific Railroad easement to the west, vacant property to the north, and commercial and industrial properties to the east-southeast. In the immediate vicinity of the subject property, the surrounding properties are zoned for general industrial use.

Former Facility Operations and Current Use: Prior to 1969, the site was undeveloped and used for agricultural production. In 1969, California Portland Cement Company (CalMat) purchased the site, which was operated by its subsidiary companies CAP Concrete and CAP Transport. CAP Concrete operated the site as a concrete batch facility for the production of pre-fabricated, tilt-up building components. CAP Transport operated as a freight hauling service. Portions of the northeast quadrant of the site were leased to General Motors and Old Bay City Auction. These lessors used the property to store new and used automobiles, respectively. Other businesses leasing portions of the site included general contractors and pre-cast concrete wall manufacturers. CAP Concrete ceased operations at the site in 1985. CAP Transport continued to operate at the site until 1987 when the property was sold to Bedford Properties for development purposes. The subject site is currently undeveloped with no improvements. It is presently zoned for general industrial use. The intended uses will be commercial and industrial.

Site Hydrogeology: The subject property is in the southern margin of the Niles Cone groundwater subarea of the East Bay Plain. Underlying the Niles Cone subarea is the Newark aquifer with the Centerville-Fremont and Deep Aquifers below the Newark Aquifer. The aquitards between the Newark and deeper aquifers are not continuous and it is therefore possible for groundwater to be transported downward to the underlying aquifer system.

The regional groundwater gradient for the Newark Aquifer has historically been from highland recharge areas east of the subject property. Groundwater then flows to the west toward San Francisco Bay. Locally, the gradient has historically been directed to the southwest, as determined from potentiometric maps for the Newark Aquifer.

Based on subsurface drilling programs conducted during site investigations, surface soil at the site is underlain by interbedded silts, clays, sands and gravel to approximately 22 to 28 feet below ground surface (bgs). These strata serve as a shallow unconfined water bearing zone. Underlying the silts, clays, sands, and gravels is a very stiff brown clay with gray mottling that extends to approximately 52 feet bgs. This clay unit is an aquitard separating the upper unconfined zone and the lower confined aquifer. The confined aquifer is a clayey, very fine-grained sand that grades into a clean porous fine to medium-grained sand at approximately 63 feet bgs. The direction of groundwater flow of the shallow zone across the site is south-southwest with a gradient of 0.85 foot per 100 feet.

- 4. Documents Submitted to the Board:** The discharger has submitted numerous reports to the Board regarding investigative and remedial activities at the Site:

Harding Lawson and Associates:

- Hazardous Waste Site Assessment, August 15, 1988. Prepared by Harding Lawson and Associates (HLA) for Bedford Properties.
- Evaluation of Petroleum Hydrocarbons in Soil and Groundwater, January 5, 1989, prepared by HLA for Bedford Properties.
- Bioremediation Closure Report, December 1989. Prepared by HLA for City of Fremont Public Works Department.

Harza/Kaldveer Associates

- Geotechnical reports concerning buried concrete debris (1990). Prepared by Harza/Kaldveer Associates (H/KA) for Bedford Properties, Inc.
- Soil and Groundwater Investigation, March 22, 1991. Prepared by H/KA for Bedford Properties.
- Quarterly Groundwater Monitoring Reports, January 1992 through July 1994. Prepared by H/KA for Kemper Real Estate Management.

Law Environmental

- Environmental Assessment - Northeast Portion of Pit Area C, June 16, 1990. Prepared by Law Environmental (Law) for HLA for CalMat Properties, Inc.
- Quarterly Groundwater Monitoring Reports, 1991 through 1994. Prepared by Law for CalMat Properties, Inc.

CET Environmental Services, Inc.

- Environmental Site Assessment - Phase I, May 13, 1994. Prepared by CET for Lincoln Property Company.

Mittlehauser Corporation

- Phase I and Limited Phase II Environmental Site Assessment, April 1995. Prepared by Mittlehauser for Lincoln Property Company.

Clayton Environmental Consultants

- Subsurface Investigation, April 22, 1996. Prepared by Clayton for Kemper Real Estate Management Company.
- Results of Limited Soil Investigation, June 20, 1996. Prepared by Clayton for Kemper Real Estate Management Company.
- Results of Off-site Downgradient Groundwater Grab Sampling and Analysis. Prepared by Clayton for Kemper Real Estate Management Company.

Alameda County Water District

- Investigation of Soil and Groundwater at Former CAP Concrete Facility, 48870 Road, Fremont, April 7, 1997. Letter recognizing all known soil remediation is complete, but groundwater monitoring is still required.

McLaren-Hart Environmental Engineering Corporation

- Revised Phase I Environmental Assessment of the Former CAP Concrete Property Located at 48870 Kato Road in Fremont, California, July 1, 1997. Prepared for Opus Southwest Corporation.

5. Soil and Groundwater Investigative and Remedial Activities:

Remediation Accomplished: In 1980, two 500-gallon gasoline/diesel underground storage tanks were removed. In 1988, three 10,000-gallon diesel and one 8,000-gallon underground storage tanks, and one 500-gallon motor oil above ground storage tank and approximately 500 cubic yards of petroleum contaminated soil were removed from the Property. From 1988-1995 an extensive groundwater investigation was conducted on the Property, which included quarterly groundwater monitoring from at least 1991 through July 1994. The investigation demonstrated that levels of petroleum hydrocarbons at the Property had been reduced to near water quality objectives. The investigation also revealed low concentrations of VOCs in shallow groundwater. On April 7, 1997, the ACWD determined that no additional soil remediation on the Property was necessary, but requested that LandBank, Inc. submit a plan for continued groundwater monitoring at the

Property post development. LandBank, Inc. submitted the groundwater monitoring plan, "Groundwater Monitoring Plan for Former CAP Concrete Facility, 48870 Kato Road (April 1, 1997), IT Brownfields Service Corporation", on or about April 1, 1997. The ACWD approved the monitoring plan shortly thereafter. Board staff has reviewed the ACWD's determinations and concurs that all necessary soil remediation has been completed and the groundwater monitoring plan submitted by LandBank, Inc. is adequate.

Future Remediation: While groundwater concentrations continue to stabilize and/or diminish consistent with the removal of all known soil pollution sources, site activities will focus on groundwater monitoring. Groundwater monitoring will determine the impacts of the remaining residual VOC groundwater pollution and be used to determine what the final remediation should be, if any. Kato Road LLC has committed to complete the approved groundwater monitoring plan as well as any further remediation of existing pollution deemed necessary based on the results of the monitoring activities described in the plan. Due to the extent of work completed at the Property to date, current site specific conditions, and the low levels of pollution remaining, the Board does not expect the need for future remediation. However, should groundwater monitoring or the discovery of as yet unknown pollution warrant, additional work, including but not limited to, further monitoring, additional source removal of as yet unknown "hot spots", or establishment of a Containment Zone may be required by the Board. Kato Road LLC has agreed to address existing pollution at the site, in accordance with this Order or its amendments, regardless of who is the current owner of the site.

Kato Road LLC has purchased an Environmental Real Estate Pollution insurance policy ("Environmental Insurance Policy") for investigation and remediation of the Property that insures LandBank Environmental Properties, LLC; LandBank Remediation Corporation; Kato Road LLC; Southwest Kato LLC; Opus Southwest Corporation; and FKLA Realty Corporation (an Illinois Corporation), against necessary cleanup costs attributable to known conditions on the Property above a deductible of \$150,000. The Environmental Insurance Policy also insures against necessary cleanup costs attributable to unknown conditions above a deductible of \$50,000, to an aggregate maximum of \$5,000,000. To assure adequate financing for environmental work at the Property and to assure funding of the deductibles under the insurance policy, Kato Road LLC has placed in escrow the sum of \$525,000. The escrowed funds have been made available by Kato Road LLC to complete its obligations under this Order. Once \$150,000 of such funds have been spent to address known environmental conditions at the Property, or \$50,000 has been spent to address unknown environmental conditions at the Property, any further environmental expenses shall borne by United National Insurance Company in accordance with the terms of the Environmental Insurance Policy. Irrespective of who is financing any investigation and/or remediation at the Property, the Board will look to Kato Road LLC to assure completion of all requirements of this Order and its amendments. Once the Board confirms that Kato Road LLC has completed its obligations pursuant to this Order and its amendments, any funds remaining in the escrow shall be released to the respective parties under the terms of their contract.

Based on the financial assurances provided by Kato Road LLC, the Environmental Insurance Policy for the Property, and the agreed upon escrow account, as well as the low level of contaminants remaining at the Property, Board staff has determined that Kato Road LLC is highly likely to be able to perform any necessary work under this Order or future orders of the Board.

- 6. Basis for Final Cleanup Standards:** While investigation and some interim remediation has taken place on the site, the discharger has yet to submit a final Remediation Action Plan (RAP). Further monitoring and the completion of tasks and assessments are needed. In addition, further investigation, source removal, and remediation may be necessary based on monitoring results. The proposed RAP is necessary for the Board to adopt final Site Cleanup Requirements and will be based on the following:

General: State Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels less than background must be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives.

State Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge.

Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally-high contaminant levels. Groundwater underlying and adjacent to the site qualifies as a potential source of drinking water.

Basin Plan, Beneficial Uses, and Water Quality Objectives: The Board adopted a revised Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) on June 21, 1995. This updated and consolidated plan represents the Board's master water quality control planning document. The revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters.

Groundwater Beneficial Uses: The Basin Plan designates the following potential beneficial uses of groundwater underlying and adjacent to the Site:

- Municipal and domestic water supply
- Industrial process water supply
- Industrial service water supply
- Agricultural water supply

7. **Basis for Soil Cleanup Standards:** Based upon ACWD's recommendations, information now available, and concurrence of the Board staff, no further soil remediation is required.
8. **Basis for Groundwater Cleanup Standards:** The groundwater cleanup standard for the Site is based on applicable water quality objectives and are the more stringent of EPA and California primary Maximum Contaminant Levels (MCLs). Cleanup to these levels should result in acceptable residual risk to humans and meet the requirements of State Board Resolutions 68-16 and 92-49. If the discharger wishes to propose alternate cleanup standards and/or compliance levels, State Water Board's Resolution No. 92-49 may be used as the basis for consideration and approval.
9. **Scope of this Order:** This Order requires implementation of the required tasks, institutional controls, monitoring and reporting, and the submission of a final Remedial Action Plan.
10. **Basis for 13304 Order:** The discharger has agreed to remediate the waste that has been discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance.
11. **Cost Recovery:** Pursuant to California Water Code Section 13304, the discharger is hereby notified that the Board is entitled to, and may seek reimbursement from the discharger for, all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
12. **CEQA:** This action is an order to enforce the laws and regulations administered by the Board. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of Title 14, California Code of Regulations (Resources Agency Guidelines).
13. **Notification:** The Board has notified the discharger and all interested agencies and persons of its intent under California Water Code Section 13304 to prescribe site cleanup requirements for the discharge, and has provided them with an opportunity to submit their written comments.
14. **Public Hearing:** The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, that the discharger (or its agents, respective successors, or assigns), as specified below shall cleanup and abate the effects described in the above findings as follows:

A. PROHIBITIONS

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.
2. Further significant migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.
3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

B. TASKS

1. IMPLEMENT GROUNDWATER MONITORING PLAN

Due Date: October 15, 1997

Description: Submit initial results of the approved groundwater monitoring plan by October 15, 1997, and quarterly thereafter for a period of two years to the satisfaction of Executive Officer. A copy of the reports shall also be sent to the ACWD. Cessation of the quarterly groundwater monitoring and removal of the groundwater wells will only be allowed with the written permission of the Executive Officer.

2. UNKNOWN SOURCE REMOVAL OR REMEDIATION WORKPLAN

Due Date: Within five (5) working days of the discovery of an existing but previously unknown source of pollution, and prior to the submittal of the proposed Remedial Action Plan in Task 3.

Description: During construction and site preparation, and prior to the submittal of the RAP in Task 3, the discharger shall notify the Board of the discovery of any previously unknown sources of pollution at the site. Included in the notification shall be a workplan and time schedule to either immediately remove or remediate the pollution to standards satisfactory to the Executive Officer or at the option of the discharger and with the approval of the Executive Officer, the removal and/or remediation workplan may be delayed and combined with the RAP in Task 3.

3. EVALUATION OF EFFECTIVENESS OF GROUNDWATER MONITORING AND SUBMITTAL OF REMEDIAL ACTION PLAN

Due Date: October 1, 1999

Description: The discharger shall submit a technical report acceptable to the Executive Officer evaluating the results of the groundwater monitoring described Task 1. If groundwater cleanup standards have not been achieved, the report shall propose an appropriate response acceptable to the Board that shall include a risk assessment and a Risk Management Plan. If monitoring results warrant, the report may include, and the Board shall consider, a request for a finding that no further action is required at the site. The report shall include a certification by the discharger that all known wastes have been reported to the Board.

4. PROPOSE AND RECORD INSTITUTIONAL CONSTRAINTS

Due Date: Submit proposed Institutional Constraints by January 1, 2000

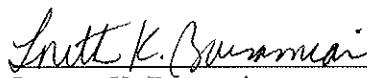
Description: If necessary, reasonable institutional constraints at least equivalent to an Environmental Restriction under California Civil Code § 1471 in form and substance satisfactory to the Executive Officer shall be proposed (and recorded) against the site. The document shall require the discharger and future owners and occupants of the site to comply with the yet-to-be finalized Risk Management Plan. The institutional constraints shall also prohibit use of groundwater beneath the site without the prior written consent of the Executive Officer. If an Environmental Restriction is the institutional constraint, the discharger shall record the document and submit copies to the Board within 30 days after approval of draft form by the Executive Officer.

C. PROVISIONS

1. **No Nuisance:** The storage, handling, treatment, or disposal of soil or groundwater containing chemicals of concern shall not create a nuisance as defined in California Water Code Section 13050(m).
2. **O&M:** The discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.
3. **Cost Recovery:** The discharger shall be liable, pursuant to California Water Code Section 13304, to the Board for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of pollution by the discharger and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action regarding such discharges, required by this Order. If the site addressed by this Order is enrolled in a State Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the discharger over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.
4. **Access to Site and Records:** In accordance with California Water Code Section 13267(c), the discharger and future owners and operators shall permit the Board or its authorized representative:
 - a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.
 - b. Access to copy any records required to be kept under the requirements of this Order.
 - c. Inspection of any monitoring or remediation facilities installed in response to this Order.

- d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the discharger.
5. **Self-Monitoring Program:** The discharger shall comply with a Self-Monitoring Program as ordered by the Executive Officer and as part of Tasks B.1, B.2., and B.3.
6. **Contractor/Consultant Qualifications:** All technical documents shall be signed by and stamped with the seal of a California registered geologist, or a California certified engineering geologist, or a California registered civil engineer.
7. **Lab Qualifications:** All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control (QA/QC) records for Board review. This provision does not apply to analyses that can only reasonably be performed on-site (e.g. temperature).
8. **Document Distribution:** Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:
 - a. Alameda County Water District
 - b. City of Fremont (Fire Department)
 - c. Any other public agency as the Executive Officer may designate.
9. **Reporting of Changed Owner or Operator:** The discharger shall submit a technical report to the Board on any changes in the ownership of the discharger. The discharger is required to notify the Site Owner of the existence of this Order and the requirement to comply with the Risk Management Plan.
10. **Periodic SCR Review:** Not later than two years, the Board will review this Order. The Board may also periodically review and revise it when necessary.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on August 20, 1997.


Loretta K. Barsamian
Executive Officer

Attachment 1 - Site Map

